2016

Thomas D. Boyle, Respondent/Appellee v. Clyde Snow & Sessions, p.c., Petitioner/Appellant

Utah Supreme Court

No. 20160621-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

THOMAS D. BOYLE,
Respondent/Appellee

v.

CLYDE SNOW & SESSIONS, P.C.,
Petitioner/Appellant

BRIEF OF APPELLANT/PETITIONER

On Writ of Certiorari to the Utah Court of Appeals

Third Judicial District Court, Salt Lake County, Utah,
West Jordan Department, Honorable Barry Lawrence
District Court No. 090400630, Utah Court of Appeals No. 20140820-CA

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List of All Parties

This case originated as a case filed by Dawn Boyd Woodson against parties she thought responsible for the death of her son. Those claims were resolved by settlement. The appellate proceedings, including the Writ of Certiorari proceedings concern the resolution of competing claims between Appellant/Petitioner Clyde Snow & Sessions, P.C. ("Clyde Snow") and Appellee/Respondent Thomas D. Boyle ("Boyle") to attorney's fees owed by Ms. Woodson and initially paid to her then attorneys, Prince Yeates and Geldzahler, P.C. ("PYG") from settlement proceeds. The district court established an interpleader proceeding after PYG deposited the fees at issue into court, designating Clyde Snow, Boyle and Matthew Wiese (another attorney) as parties.

Only Boyle and Clyde Snow participated in the interpleader proceedings before the district court and the appeal of the district court's judgment thereon to the Utah Court of Appeals. Only Boyle and Clyde Snow are parties to the instant proceeding.

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction pursuant to Utah Code Ann. § 78A-3-102(2), (3) and (5) (2016), Article VIII, Section 3 of the Utah State Constitution, and Rule 45 of the Utah Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

1. Issue: Whether the Court of Appeals erred in determining that Petitioner/Appellant Clyde Snow & Sessions, P.C. ("Clyde Snow") did not timely intervene in the underlying wrongful death action (the "Action") and that no party to the action waived the requirements for formal intervention.

Standard of Review: On certiorari, the Supreme Court reviews the decision of the Court of Appeals, rather than of the trial court, giving it no deference and applying a correctness of error standard. *Nichols v. Jacobsen Const. Co.*, 2016 UT 19, ¶ 13, 374 P.3d 3. The Supreme Court also applies the same standard of review used by the Court of Appeals. *Coulter & Smith, Ltd. v. Russell*, 966 P.2d 852, 855 (Utah 1998). The Court of Appeals' decision, *Boyle v. Clyde Snow & Sessions PC*, 2016 UT App 114, 378 P.3d 98 (the "Opinion") is attached as Add. A.

"[A] ruling on a motion to intervene encompasses several types of analysis, each subject to a different standard of review." *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 14, 297 P.3d 599. Appellate courts "review the district court's legal determinations for correctness," but will "not disturb the district court's factual findings unless they are clearly erroneous." *Taylor-W. Weber Water*

Improvement Dist. v. Olds, 2009 UT 86, ¶ 3, 224 P.3d 709. In addition, a district court has discretion to determine whether to grant permissive intervention, and its decisions in this regard are reviewed for abuse of discretion. *Id.* The district court's determination of whether a request to intervene was timely is also reviewed for "abuse of discretion" because "timeliness depends on the facts and circumstances of each particular case." *Supernova*, 2013 UT 7 at ¶ 15 (quotations and citation omitted).

"Waiver presents a mixed question of law and fact." *Mower v. Nibley*, 2016 UT App 174, ¶ 11, 382 P.3d 614. "[W]hether the trial court employed the proper standard of waiver presents a legal question which is reviewed for correctness, but the actions or events allegedly supporting waiver are factual in nature and should be reviewed as factual determinations, to which we give a district court deference." *Id.* (quotations and citation omitted).

2. **Issue:** Whether the Court of Appeals erred in concluding Clyde Snow's arguments regarding its status as an interpleader party were inadequately briefed and did not demonstrate such a status.

Standard of Review: On certiorari, the Supreme Court reviews the Court of Appeals' decision for correctness, applying the same standard of review applicable to the Court of Appeals. *Nichols*, 2016 UT 19 at ¶ 13; *Coulter*, 966 P.2d at 855. The question of adequate briefing turns on the interpretation of both the Court of Appeals' decision below and Rule 24 of the Utah Rules of Appellate Procedure, which present questions of law. *See Nichols*, 2016 UT 19 at ¶ 13 (reviewing Court of Appeals' decision for correctness); *Simler v. Chilel*, 2016 UT 23, ¶ 9, 379 P.3d 1195 (reviewing interpretations

of procedural rules for correctness).

With respect to the district court's authority to order the deposit of funds into court and to decide how to distribute those funds among contesting claimants through equitable interpleader, the standard of review is abuse of discretion. "An action in interpleader is a proceeding in equity . . . ." *Terry Sales, Inc. v. Vender Veur,* 618 P.2d 29, 31 (Utah 1980). "[A] trial court is accorded considerable latitude and discretion in applying and formulating an equitable remedy, and [it] will not be overturned unless it [has] abused its discretion." *Ockey v. Lehmer,* 2008 UT 37, ¶ 42, 189 P.3d 51.

3. Issue: If Clyde Snow did not acquire party status, whether this Court can acquire jurisdiction via a petition for writ of certiorari to reverse or vacate a Court of Appeals' decision that purported to declare a district court's judgment void notwithstanding the Court of Appeals' concession of a lack of appellate jurisdiction.

Standard of Review: The "propriety of [a] jurisdictional determination" is a "question of law," reviewed for correctness. *Johnson v. Johnson,* 2010 UT 28, ¶ 6, 234 P.3d 1100 (quotations and citation omitted).

Preservation of Issues: Each of these issues was presented or fairly included within Clyde Snow's Petition for Writ of Certiorari (the "Petition"). (Petition, at 1, 8-20.)

DETERMINATIVE LAW

Article VIII, Section 3 of the Utah State Constitution is determinative of the jurisdictional issue (Issue #3), which provides, in pertinent part:

> The Supreme Court shall have original jurisdiction to issue all extraordinary writs . . . and power to issue all writs and orders

> necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

Utah Const. art. VIII, § 3.

There are no statutes, rules, or constitutional provisions determinative of the other issues. However, Utah Code Ann. § 38-2-7 and Utah R. Civ. P. 22, 24 and 67 have some relation to the remaining issues and are included in Add. B.

STATEMENT OF THE CASE

Nature of Case

This case originated as a case filed by Dawn Boyd Woodson ("Ms. Woodson") against parties she thought responsible for the death of her son (the "underlying action" or "Woodson case"). The claims in the underlying action were resolved by settlement. The proceedings germane to this appeal, including the appellate proceedings before the Court of Appeals and before this Court on writ of certiorari, concern the district court's resolution of competing claims between Clyde Snow and one of its former attorneys, Respondent/Appellee Thomas D. Boyle ("Boyle"), to recover attorney fees for work provided in the underlying action under a contingency-fee arrangement.

The district court in the underlying action accepted the deposit of attorney fees by Prince Yeates and Geldzahler, P.C. ("PYG"), counsel for Ms. Woodson at the time of settlement, into court and thereafter conducted a trial between Clyde Snow and Boyle to resolve competing claims to those fees. The issues before this Court involve the district court's authority to conduct proceedings and enter rulings to resolve competing claims between attorneys to recover attorney fees that had been deposited into the district court.

Course of Proceedings and Statement of Facts

Clyde Snow has combined the Course of Proceedings and Statement of Facts because the material events involve the course of proceedings and disposition below.

Background

The underlying case was filed as a wrongful death matter involving the unfortunate death of Caleb Jensen, a minor, who died while attending a youth reform wilderness camp. R. 4694, 4729-30. Ms. Woodson retained Clyde Snow on a contingency-fee basis to represent her individually and as personal representative regarding claims associated with the death of her son. R. 4694, 4866-70.

Clyde Snow provided representation from May 2007 through the end of May 2010. R. 4741-4837. Clyde Snow's contingency-fee contract with Ms. Woodson states that Clyde Snow was entitled to receive "forty percent (40%) of any Recovery," and that Clyde Snow "shall have a lien on any claim, suit or recovery for fees, costs and expenses arising out of or related to" its representation. R. 4867-68. This contract also provides that "[i]n the event of a Recovery after the Firm [Clyde Snow] has been discharged, the Firm shall be compensated for the reasonable value of the Firm's services." R. at 4869-70.

Boyle was employed by Clyde Snow during Clyde Snow's representation of Woodson. Clyde Snow assigned Boyle to serve as lead counsel. R. 4695-96, 4840. In June 2010, Boyle left Clyde Snow to join PYG, and representation on the Woodson case transferred from Clyde Snow to PYG, where it remained until a settlement was reached in June 2013. R. 4877-4921, 1028-30.

Prior to his departure from Clyde Snow to commence employment with PYG, Boyle co-authored a letter to Ms. Woodson informing her that Boyle was leaving Clyde Snow effective June 1, 2010, and that Ms. Woodson had "the prerogative of deciding whether your legal work follows [Boyle] to [PYG] or remains with Clyde Snow & Sessions." R. at 4877. Ms. Woodson elected to stay with Boyle, but praised Clyde Snow for its "hard work." *Id.*

Under Boyle's direction, Clyde Snow invested 2,761.2 hours of professional time in the Woodson case. R. 4819, 4829. The Woodson case settled for $XXXX.00,[1] and generated an overall attorney fee collected by PYG of $XXXX.00. *Id.*

Attorney's Lien Proceedings

On July 7, 2010, Clyde Snow filed a Notice of Attorney's Lien in the Woodson case. R. 1030-33, 6077, 6110-11. On June 28, 2013, upon learning of the settlement of the Woodson case, Clyde Snow filed a Restated Notice of Attorney's Lien and Objection to Dismissal of Action (the "Objection"). R. 4669-4673. At the time, Clyde Snow had not been informed of the amount of the confidential settlement, and thus could not state the full value of its lien. *See id.*

On July 15, 2013, the Court held a hearing on the request to dismiss the Woodson case in light of Clyde Snow's Objection. R. 4677-78. During this hearing, Blake S. Atkin ("Mr. Atkin"), then counsel for Boyle and PYG, did not object to Clyde Snow's participation in the hearing. R. 6528 (generally). Mr. Atkin instead asked the district

[1] References to the amount of the settlement and the attorney's fees from settlement in the Woodson case are redacted pursuant to a Court of Appeals' order dated May 6, 2015.

court to retain jurisdiction over Clyde Snow's attorney's lien by indicating that he intended to file a petition to invalidate the attorney's lien on the basis that Clyde Snow had "abandoned" the case, and that he may seek an evidentiary hearing. R. 6528, pp. 5-6. No objection was raised on behalf of Ms. Woodson by any attorney representing her, or purporting to represent her, at the hearing, including PYG, Boyle or Mr. Atkin. R. 6528.

Counsel for the defendants to the underlying action also did not object to Clyde Snow's participation in the July 2013 hearing or Clyde Snow's request that the Court retain jurisdiction for the limited purpose of resolving its attorney lien. R. 6528, pp. 6-8. Instead, defendants' counsel merely "voice[d] our concern," and "wonder[ed]" whether "it would not be more expedient" for Clyde Snow to commence a separate action. *Id.*, pp. 7-8. However, the Court then asked:

> THE COURT: If I were to enter an order dismissing all claims against your client[s] with prejudice, however, and simply leaving open the issue of the attorney's lien, wouldn't that get you what you needed?

Id., p. 8. To this question, defendants' counsel responded: "I think so, Your Honor. I just think it would be cleaner the other way." *Id.*

Following discussions about procedures to maintain the confidentiality of the settlement, the district court elected to continue its jurisdiction over Clyde Snow's attorney's lien, but otherwise dismissed with prejudice the remaining portions of the Woodson case. *Id.*, pp. 16-17. Prior to making this ruling, however, the district court stated:

> THE COURT: All right. Let me tell what you I'm inclined to do before I make it a formal ruling. And that is to issue an order that the

> amounts of the settlement that is not earmarked for the plaintiff, either directly or pursuant to anything in the probate court that would require money paid there, so the amount that is earmarked for fees and costs be held by Prince Yeates in a trust account and not violated until this matter is resolved.
>
> I would ask the parties to resubmit an order of dismissal making clear that all of the claims against the defendants are hereby dismissed, but leaving the case open for the sole and limited purpose of determining Clyde Snow's attorney's fees lien.
>
> I would ask the parties to brief the matter with Mr. Atkin going first and then the - - and then the Clyde Snow folks next. And before we have an evidentiary hearing on the case, I'm going to require the parties to mediate this. . . .
>
> So having said that, is there anybody, even though you might not like what I'm saying, have a strong objection and believe that I'm in error in any part of that?

Id. (emphasis added). In response, no party objected. *Id.* The parties approved orders reflecting the district court's rulings that were thereafter entered. R. 4683-89, 6529-32.

The parties attempted to mediate on November 22, 2013. R. 4922-24. Mediation failed and, on January 17, 2014, Clyde Snow filed a Second Restated Notice of Attorney's Lien, asserting a right to recover $XXXX.00. R. 4925-5049. Prior to this time, Clyde Snow was unable to demand a sum certain for its lien because Clyde Snow had not previously been informed of the amount of the settlement or the time and costs invested by PYG. On January 26, 2014, Boyle filed a request asking the district court to schedule an evidentiary hearing regarding Clyde Snow's attorney's lien. R. 5050-51.

Interpleader Proceedings to Resolve All Claims Regarding Attorney's Fees

On January 30, 2014, PYG filed a motion to interplead funds, representing:

> Prince Yeates currently holds $XXXX.00 in its trust account relative

> to the Lien. However, Prince Yeates has no interest in the $XXXX.00, except that such funds must be used to satisfy the Lien once the dispute as to the amount of Clyde Snow's claim is resolved by the Court. The only parties with claims to the $XXXX.00 are Mr. Boyle and Mr. Wiese, and Clyde Snow. Prince Yeates should be allowed to interplead the $XXXX.00 into Court, in order to avoid any risk of liability, including multiple liability, to Clyde Snow and Mr. Boyle and Mr. Wiese, and so that the Court can adjudicate the respective claims of Mr. Boyle and Mr. Wiese, and Clyde Snow, relative to this amount.

R. 5075; *see also* R. 5073-86. PYG had not withdrawn as counsel for Ms. Woodson at the time. *See* Record Index.

Clyde Snow consented to the interpleader. R. 5090-92. Boyle did not oppose PYG's motion to deposit fees and establish an interpleader. R. 5104-83. To the contrary, Boyle answered the interpleader and cross-claimed against Clyde Snow. *Id.* In his answer, Boyle admitted that "once Prince Yeates deposits the sum of $XXXX.00 . . ., Prince Yeates on information and belief will have no further liability, including multiple liability to the stakeholders, including Clyde Snow and Boyle, concerning their disputes to the Lien." R. 5106. Boyle further stated: "Should the Court rule that the correct sum to be interpleaded is in fact $XXXX.00, Boyle does not intend to contest the issue further[.]" *Id.*

By Orders dated March 25 and 27, 2014, R. 5275-76, the district court established the interpleader pursuant to PYG's motion, and directed that $XXXX.00 of the fees held by PYG be deposited into court pursuant to "Rule 67 of the Utah Rules of Civil Procedure." R. 5276, attached as Add. C The district court also ordered that "once Prince Yeates deposit[s] these funds with the Court, Prince Yeates will have no further

liability to Clyde Snow, or to Mr. Boyle, or to Mr. Wiese . . . ." *Id.*

On April 3, 2014, PYG provided notice that it had deposited $XXXX.00 into court. R. 5284-5288. Clyde Snow then filed a complaint, and then an amended complaint, seeking to recover the interpleader *res*, stating causes of action for (i) lien foreclosure, (ii) declaratory relief/damages, and (iii) unjust enrichment. R. 5289-5466.

On April 28, 2014, Boyle filed a "Motion to Dismiss and/or Strike Clyde Snow's Purported Attempt to Intervene." R. 5467-74. Despite previously filing his own pleading seeking to recover the interpleaded fees, Boyle claimed Clyde Snow failed to intervene as required by Utah law to enforce its attorney's lien. *Id*. On May 5, 2014, however, Boyle also filed an answer and counterclaim to Clyde Snow's amended complaint. R. 5509-85.

On June 10, 2014, the district court held a hearing, during which Boyle agreed that any obligation by Clyde Snow to intervene to enforce its attorney's lien had been waived:

> THE COURT: Okay. But why did it take then nine months for you to make that motion? I mean I'm sitting here thinking, frankly, this issue has been waived. I mean you have orders from the Court that clearly reflect the Court's understanding that Snow's interest is going to be looked at. They filed a restated notice of lien back last June. There are lots of things that happened. We go through this process, and then it's not until within the last month or so that you object. I mean haven't by your - - by your silence haven't you acquiesced to allowing this Court to determine Clyde Snow's interest here?
>
> MR BOYLE: Your Honor, if I were in your position I think I would probably agree with that. . . .

R. 6524, pp. 9-10.

On July 1, 2014, the district court entered a written order denying Boyle's Motion to Dismiss on three grounds. R. 6284-87, attached as Add. D. First, the district court

ruled that "Clyde Snow is a proper interpleader party herein and that any issue or other procedural objection associated with the requirement to present a formal motion to intervene has been resolved by prior orders of the Court, and establishment of the interpleader." R. 6285. Second, "as an additional basis," the district court ruled that "Clyde Snow has substantially complied with such obligation by filing a pleading that sets forth the grounds and related claims through and by which Clyde Snow seeks to recover in relationship to the funds." *Id.* Third, as a further "additional basis," the district court ruled that "any objection based on the requirement to present a formal motion to intervene has been waived based on the substantial process and other events that have occurred since July of 2013." *Id.*

The district court held an evidentiary hearing on July 2, 2014. R. 6525. Clyde Snow called five witnesses, including an expert witness to render an opinion on the reasonableness of Clyde Snow's fee demand, and offered eleven exhibits which were admitted by the Court. R. 6525, pp. 9-127. Boyle briefly testified and recalled one of Clyde Snow's witnesses, but did not call Ms. Woodson even though she was present. *Id.*, pp. 12, 128-37, 148. Boyle presented no expert testimony and offered no exhibits. *Id.*, pp. 128-37, 148.

At the conclusion of the trial, the district court ruled that Clyde Snow was entitled to recover the entire interpleader *res* of $XXXX.00 in satisfaction of its attorney's lien and, based on the evidence adduced at the hearing, entered detailed findings of fact and conclusions of law to support its decision. R. 6322-33, attached as Add. E; R. 6525, pp. 168-177. The district court ordered the release of the entire interpleader *res* to Clyde

Snow on July 17, 2014, R. 6343-45, and the funds were released by check on July 18, 2014. R. 6353-57.

Proceedings before the Utah Court of Appeals

Boyle appealed the district court's judgment. R. 6370-72. The Utah Court of Appeals heard argument on November 19, 2015. On February 16, 2016, the Court of Appeals issued an Order directing supplemental briefing on the following issue: "Where the Appellant [Boyle] was not a party to the underlying action, does the Utah Court of Appeals have jurisdiction over this appeal?" (Order, attached as Add. F). The Court of Appeals also directed the parties to address the effect of *Utah Down Syndrome Found., Inc. v. Utah Down Syndrome Ass'n*, 2012 UT 86, 293 P.3d 241. *Id.*

The Court of Appeals issued its Opinion on May 10, 2016, reversing on the basis that it thought the district court lacked subject matter jurisdiction over the dispute because Boyle and Clyde Snow were never made parties to the case. *See Boyle*, 2016 UT App 114 at ¶¶1, 25. The Court of Appeals thus determined it lacked appellate jurisdiction over Boyle's appeal but, lacking jurisdiction, still purported to declare the district court's orders void. *See id.* at ¶¶ 23-25.

In so ruling, the Court of Appeals first stated:

> Neither Boyle nor Clyde Snow formally intervened in the action below and, aside from their interest in being paid for representing Woodson, neither has a stake in the subject matter of the underlying action . . . Subject matter jurisdiction is not a matter of the court's discretion . . . Accordingly, as a threshold matter, we must determine whether Clyde Snow properly intervened in the underlying action to enforce its attorney lien. If it did not, the district court had no jurisdiction and any order based on motions made by and for the interests of the non-parties are void.

Id. at ¶ 12. The Court of Appeals thus determined Clyde Snow failed to "timely" intervene in the action and that any effort to intervene by June of 2013 would have been untimely. *Id.* at ¶ 16. The Court of Appeals also determined the parties did not "waive" any objection to intervention. *Id.* at ¶ 22. The Court of Appeals concluded:

> Because Clyde Snow did not submit a timely application to intervene and the parties did not waive the intervention requirements, it was not a party to the underlying case. As a result, the district court erred by keeping the underlying case open to resolve Clyde Snow's lien. Furthermore, because Clyde Snow, Boyle, and Prince Yeates were not parties to the underlying action, the court lacked jurisdiction to make orders with regard to their post-judgment motions.

Id. at ¶ 25.

By way of footnote, the Court of Appeals rejected Clyde Snow's argument that any requirement to formally intervene had been waived or mooted by the establishment of an interpleader identifying Clyde Snow and Boyle as parties to the interpleader, which allowed them to advance their claims against the *res* of deposited fees. *See id.*, ¶ 23 n.4; *see also* Brief of Appellee to Court of Appeals, pp. 22-23. The Court of Appeals reasoned that "what [PYG] filed was not in fact an interpleader action" because PYG's filing was formally styled as a "motion" for leave to interplead funds, rather than as a complaint. *Id.*

Clyde Snow filed a Petition for a Writ of Certiorari (the "Petition") on July 27, 2016. This Court "provisionally granted" the Petition on October 7, 2016, subject to the Court's "determination of its jurisdiction" on the issues identified herein. (Order Granting Petition, p. 1).

SUMMARY OF THE ARGUMENT

The Court of Appeals' Opinion elevates form over substance and disregards the substantial record establishing the district court acted within its discretion to allow Clyde Snow to participate in the underlying action as a formal or de facto party for the limited purpose of resolving its claim to recover fees. No person or entity submitted a timely objection to Clyde Snow's participation or to the district court's decision to allow the fees at issue to be deposited with the court while the competing claimants – Clyde Snow and Boyle – litigated their entitlement to these fees. The Court of Appeals' decision should be reversed.

A. Intervention

The Court of Appeals first held the district court erred by continuing its jurisdiction to resolve Clyde Snow's fee claim because Clyde Snow's efforts to intervene were untimely. This ruling is erroneous in several respects.

First, it disregards the unique nature of the contingency-fee arrangement giving rise to Clyde Snow's fee claim and the district court's substantial discretion to determine the timeliness of a request to intervene, as well as its discretion to permit intervention. Although Clyde Snow did not file a document entitled "Motion to Intervene," Clyde Snow's June 28, 2013 Objection to dismissal and requests at the July 15, 2013 hearing that the district court retain jurisdiction to resolve Clyde Snow's fee claim accomplished the same purpose. The district court acted within its discretion to allow Clyde Snow to participate as a party based on these requests.

Furthermore, contrary to the Court of Appeals' decision, Clyde Snow could not have sought to intervene at an earlier point in time. Under Utah law, an attorney may not move to intervene in an action to enforce a lien before "30 days has expired after a demand for payment has been made and not complied with." Utah Code Ann. § 38-2-7(4)(b). Under its contingent-fee agreement with Ms. Woodson, Clyde Snow's right to receive payment did not arise until Ms. Woodson settled the underlying case through a confidential settlement agreement. Clyde Snow asked the district court to retain jurisdiction to resolve its lien promptly after learning of the settlement and before dismissal. By holding that any attempt by Clyde Snow to intervene on June 28, 2013, was untimely, the Court of Appeals effectively eliminated Clyde Snow's statutory right to intervene because the lien right itself did not exist until the case settled, and settlement proceeds and fees are typically distributed immediately. The district court must be given discretion to take these circumstances into account, and the Court of Appeals erred by substituting its judgment on timeliness for that of the district court.

Second, the Court of Appeals erred by reversing the district court's decision that any objection based on the requirement to present a formal motion to intervene was waived. Utah law has long recognized that an objection to participation by a non-party can be waived. The record before the district court is clear: there were no objections by Ms. Woodson or the defendants to Clyde Snow's participation or to the lack of a formal motion to intervene, and Boyle's first objection occurred *ap*proximately ten months later, after substantial process had occurred. The Court of Appeals erred by relying on the distinguishable circumstances from *Ostler v. Buhler*, in which the first non-party filings

occurred *after* judgment had been entered rather than upon the record facts on which the district court relied. 1999 UT 99, ¶ 9, 989 P.2d 1073.

B. The Effect of the Interpleading of Funds

The Court of Appeals erred by disregarding the effect the deposit of attorney fees into court had upon both the district court's decision to retain jurisdiction to resolve competing claims to these funds, and upon Clyde Snow's status as a party to the equitable interpleader proceeding. As Clyde Snow explained in its briefing to the Court of Appeals, the intervention question cannot be divorced from the establishment of the interpleader because, once PYG deposited the fees (without objection), it made it unnecessary to determine whether the claimants to the fees – Clyde Snow and Boyle – should have formally intervened. Clyde Snow and Boyle submitted to the district court's jurisdiction over the interpleaded fees and received all the process due to parties; each filed pleadings setting forth their claims to the fees, engaged in motion practice, and had a trial on the merits.

The Court of Appeals disregarded the substantive effect of the interpleading of the funds, choosing instead to render a technical ruling that PYG's motion and deposit of the fees did not create an interpleader because Rule 22 of the Utah Rules of Civil Procedure requires the filing of a pleading. This ruling is flawed for several reasons.

First, Rule 22 does not state that a complaint must be filed to deposit funds into the court, particularly where the funds at issue arise from the settlement of the underlying case and are deposited in the court that heard the underlying action. No purpose would have been served by requiring PYG to file a complaint or separate action in these

circumstances, and the Court of Appeals' interpretation of Rule 22 contradicts both the rule's text and the requirements of "liberal" construction under Rule 1 of the Utah Rules of Civil Procedure. Utah R. Civ. P. 1.

Second, the Court of Appeals overlooked that Rule 67 of the Utah Rules of Civil Procedure authorizes the district court to allow the deposit of money into court upon "motion." Notably, the district court specifically referenced Rule 67 in granting PYG's Motion to Interplead Funds. Numerous federal authorities have approved a district court's exercise of its discretion to allow the deposit of attorney fees into court to resolve competing claims thereto under very similar circumstances.

Third, the Court of Appeals overlooked the effect the deposit of the fees into court had upon the district court's authority to resolve claims to those fees. It is well established that a district court has jurisdiction over funds in its possession. Once funds have been deposited with the court, the court must have authority to determine how to distribute those funds. Moreover, where Ms. Woodson did not assert any claim to the fees, and where there was no prejudice to any party (including Boyle) from the deposit, any error by the district court in allowing such deposit was harmless, at best.

C. This Court Has Original Jurisdiction to Issue Writs of Certiorari

Even assuming *arguendo* that Clyde Snow did not obtain party status, this Court still has original jurisdiction to issue a writ of certiorari. The power to issue a writ of certiorari stems from Article VIII, Section 3 of the Utah Constitution. This Court held in *Petersen v. Utah Board of Pardons*, 907 P.2d 1148, 1152 (Utah 1995), that the power to issue "extraordinary writs" granted by this Constitutional provision includes the power to

issue writs of certiorari in favor of parties who have no right to appeal a lower court's decision.

Similarly, even if this Court determines that neither Clyde Snow nor Boyle obtained party status, it should reverse the Court of Appeals' decision that declared the district court's decision void after the Court of Appeals determined it did not have *appellate* jurisdiction over Boyle's appeal. Under settled Utah law, once an appellate court determines it lacks jurisdiction, it has only the power to dismiss the appeal, leaving in place the district court order that was appealed. The Court of Appeals erred by declaring the district court's judgment void after the Court of Appeals determined that it lacked appellate jurisdiction. The Court of Appeals' decision should be reversed and the district court's judgment reinstated.

ARGUMENT

I. INTERVENTION.

The first issue on certiorari asks:

> Whether the Court of Appeals erred in determining that [Clyde Snow] did not intervene and that no party to the action waived the requirements for formal intervention.

(Order Granting Petition, p. 1.) The totality of circumstances establishes that the district court correctly exercised its discretion to allow Clyde Snow to intervene and participate in the underlying action to enforce its attorney's lien. The Court of Appeals' holdings that Clyde Snow's efforts to intervene were untimely and that no party waived the requirements for formal intervention are therefore erroneous.

A. The Court of Appeals Erred by Ruling that Clyde Snow Failed to Timely Seek Leave to Intervene.

Utah Code Section 38-2-7 creates a lien in favor of an attorney to recover "compensation due from a client on any money or property owned by the client that is the subject of or connected with work performed for the client[.]" Utah Code Ann. § 38-2-7(2). An attorney may enforce its lien in the pending legal action in which the attorney performed work by "moving to intervene in the pending legal action." *Id.* § 38-2-7(4)(a). When a contingency fee case is transferred to another firm, the originating firm's right to compensation continues. *Olsen and Brown v. City of Englewood*, 889 P.2d 673, 675 (Colo. 1995)

The Court of Appeals determined the district court erred by retaining jurisdiction to resolve Clyde Snow's claims to recover fees because Clyde Snow's efforts to intervene were untimely. *See Boyle,* 2016 UT App 114 at ¶¶ 15-16. This ruling disregards the unique nature of the contingency-fee arrangement giving rise to Clyde Snow's claims and the substantial discretion given to the district court to permit intervention. *See State By & Through Utah State Dep't of Soc. Servs. v. Sucec,* 924 P.2d 882, 887 (Utah 1996).

An attorney may not move to intervene in an action or file a separate action to enforce a lien "before 30 days has expired after a demand for payment has been made and not been complied with." Utah Code Ann. § 38-2-7(4)(b). This waiting period creates a special hurdle for attorneys proceeding under a contingency-fee contract. Namely, an attorney's right to payment under a contingency-fee contract is not ripe for enforcement until the plaintiff secures the right to receive payment from the defendant, either through

judgment or settlement. *See, e.g.*, *Fracasse v. Brent*, 494 P.2d 9, 14 (Cal. 1972). The Court of Appeals' Opinion effectively renders the contingent-fee attorney's hurdle insurmountable.

Ms. Woodson and the defendants to the underlying case entered into a confidential settlement agreement in or about early June 2013, and sought dismissal of the action in mid-June, 2013. R. 4647-57; 4877-4921. On June 28, 2013, having just heard of the impending settlement (but no other details), Clyde Snow filed its Objection, which included a Restated Notice of Attorney's Lien. R. 4669-73. However, because Clyde Snow did not know the amount of the settlement or other facts bearing on the right to recover fees, such as the amount of time and costs invested by PYG, Clyde Snow could not then state the full value of its lien or demand payment from Ms. Woodson and wait 30 days before seeking to intervene.

In holding that any attempt by Clyde Snow to intervene in the underlying case on June 28, 2013, would have been untimely, the Court of Appeals created an impossible situation for Clyde Snow and all other attorneys proceeding on a contingency-fee contract. Simply stated, if an attempt by an attorney to intervene less than 30 days after a plaintiff agrees to a settlement is untimely, as the Court of Appeals held, then an attorney with a contingency-fee right can effectively never intervene because the contingent-fee attorney (a) has no right to payment until the underlying case is settled; (b) must wait 30 days after a demand for payment is made to enforce a lien; and (c) must state the amount of the lien and verify that he or she has made the 30-day demand for payment within the notice of lien. *See* Utah Code Ann. § 38-2-7(6)(b)(2) & (6)(e).

Here, although less than 30 days passed from settlement, the Court of Appeals held that any intervention effort by Clyde Snow by June 28, 2013, would have been untimely. *Boyle*, 2016 UT App 114 at ¶ 16. Therefore, the net effect of the Court of Appeals' ruling, contrary to the terms of the attorney-lien statute, is that a contingent-fee lawyer can no longer utilize the statutory right to intervene in an underlying case because the settlement of the case, the dismissal of the case, and the right to intervene to enforce an attorney lien, typically all occur at or near the same time, which is what occurred in the Woodson case.

The ability of a contingent-fee law firm to enforce its lien in the underlying case is paramount, and ought to be protected, because it secures the right to recover compensation prior to the distribution of settlement proceeds and the payment of fees to other lawyers involved in the case. Moreover, a contingent-fee lawyer's ability to press her or his right to recover fees in the underlying case is worth preserving because the court that administers and resolves the underlying case possesses an understanding of the legal work that led to the settlement or judgment.

In contrast to the Court of Appeals, the practical approach adopted by the district court to deal with this dilemma was the proper one: it took into account "the totality of circumstances" and entered an order well within its discretion. *See Supernova,* 2013 UT 7 at ¶ 15; *Sucec,* 924 P.2d at 887. The district court treated Clyde Snow's Objection and oral requests at the July 15, 2013 hearing – both of which occurred prior to entry of final judgment – as timely requests for leave to intervene for the purpose of enforcing its attorney's lien. This Court has recognized that a "motion" and an "objection" can be

"interchangeable." *Jensen v. Sawyers*, 2005 UT 81, ¶ 138, 130 P.3d 325. Indeed, it is well established that courts look at "the substance, not the labeling[ ] of a motion" to determine its character. *Bair v. Axiom Design, LLC*, 2001 UT 20, ¶ 9, 20 P.3d 388. Further, Clyde Snow's oral requests during the hearing for the court to retain jurisdiction to resolve any claims relating to Clyde Snow's attorney's lien were also in the nature of a motion for permissive intervention. *See* Utah R. Civ. P. 7(b) (noting that a "motion made during a hearing or trial" need not be in writing).

After receiving no objection from Ms. Woodson or the defendants to the underlying case, the district court (a) dismissed Ms. Woodson and the defendants, (b) kept the case open for the limited purpose of resolving Clyde Snow's attorney's lien, (c) granted PYG's (Ms. Woodson's counsel) unopposed motion to interplead and deposit the fees that were the subject of Clyde Snow's lien into court, and (d) made the claimants to the fees – Clyde Snow and Boyle – "parties" to the proceeding to resolve their claims to the funds. R. 4683-85; 5275-80; 6284-87. The district court's July 1, 2014 Order denying Boyle's Motion to Dismiss confirms that this was what it intended to accomplish in July of 2013.[2]

Furthermore, as the district court ruled, once PYG filed its unopposed motion to interplead a portion of the fee recovery into court, and the court accepted the deposit of these funds, there was no further need for Clyde Snow to file a formal motion to

[2] R. 6285 – stating, "Clyde Snow is a proper interpleader party herein and that any issue or other procedural objection associated with the requirement to present a formal motion to intervene has been resolved by prior orders of the Court, and establishment of the interpleader."

intervene.[3] The funds were in the custody of the court, and both Clyde Snow and Boyle filed pleadings setting forth their claims to the interpleader *res.* R. 5289-5466; 5509-85. As set forth in greater detail in Section II below, this was sufficient to confirm the district court's continuing jurisdiction over both the funds *and* the claimants, as parties. *Down Syndrome,* 2012 UT 86, ¶ 18 ("[I]t is the service of process, the affirmative act of filing suit, or the act of seeking to intervene as a party that subjects one to the jurisdiction of the court and puts him on notice that he is subject to ongoing court proceedings.").[4]

The Court of Appeals failed to acknowledge the breadth of the district court's discretion, choosing instead to substitute its own opinion of what the district court should have done under the circumstances. This is error. *See Supernova,* 2013 UT 7 at ¶ 15*; Sucec,* 924 P.2d at 887.

The Court of Appeals additionally erred in ruling that Clyde Snow's intervention was untimely because it did not occur until after Ms. Woodson and defendants "had settled and resolved their dispute." *Boyle* 2016 UT App 114 at ¶ 16. "Generally, a motion to intervene is timely if it is filed before the 'final settlement of all issues by all parties,' and before entry of judgment or dismissal." *Supernova,* 2013 UT 7 at ¶ 24 (citations omitted) (emphasis added); *accord Jenner v. Real Estate Servs.,* 659 P.2d 1072,

[3] R. 6285 – stating, "Clyde Snow has substantially complied with such obligation by filing a pleading that sets forth the grounds and related claims through and by which Clyde Snow seeks to recover in relationship to the funds."

[4] That there was no formal service of process by Clyde Snow or Boyle is immaterial. The parties had appeared and submitted to the district court's jurisdiction, which "obviate[ed the] need for service of process." *Frandsen v. Holladay,* 739 P.2d 1111, 1114 (Utah Ct. App. 1987).

1074 (Utah 1983) ("Generally, the cases hold that intervention is not to be permitted after entry of judgment.") (emphasis added). The touchstone of untimeliness is not settlement, but the entry of judgment. *See id.*

It is undisputed that a judgment of dismissal had not been entered by June 28, 2013. R. 4679-86. And because Clyde Snow could not move to intervene until it had made its 30-day demand for payment, *see* Utah Code Ann § 38-2-7(4)(b), which did not ripen until settlement, it simply could not have sought to intervene at any earlier point in time. The Court of Appeals therefore erred in relying on the mere fact of a *confidential* settlement between the parties to support its untimeliness conclusion.

The only authority the Court of Appeals cited to support its untimeliness holding was *Skypark Airport Ass'n v. Jensen,* 2011 UT App 230, 262 P.3d 432. *See Boyle,* 2016 UT App at ¶16. However, the Court of Appeals ignored that in *Skypark,* the district court exercised its discretion to *deny* a motion to intervene as untimely after the verdict but before judgment was entered. *See Skypark,* 2011 UT App 230 at ¶¶ 3-7, n.2. The present case was before the Court of Appeals under a significantly different procedural posture – wherein the district court exercised its discretion to allow Clyde Snow to participate as a party based on the unique circumstances of this case, without objection by any original party, or timely objection by Boyle to either Clyde Snow's participation or the Court's acceptance of the fee deposit. R. 6285. This distinction is important due to the substantial discretion given to the district court to permit intervention. *Sucec,* 924 P.2d at 887. By failing to take into account the district court's discretion and relying solely upon the parties' settlement, the Court of Appeals erred.

B. The Court of Appeals Erred by Ruling No Party Waived Objection to Clyde Snow's Party Participation in the Proceeding.

The district court's decision to allow Clyde Snow to participate as a party in the underlying action is independently supportable under the doctrine of waiver. It is well established that "parties [can] waive the need for formal intervention." *See Fisher v. Fisher*, 2003 UT App 91, ¶ 17, 67 P.3d 1055; *accord Utah Ass'n of Counties v. Tax Comm'n of State of Utah*, 895 P.2d 819, 820-21 (Utah 1995) (holding party "waived its right to challenge [non-party] UAC's participation" in the hearing by failing to object to that participation, and thus "UAC adequately intervened in the hearing below on a de facto basis"); Ostler, 1999 UT 99 at ¶ 7 (parties can waive objection to "informal intervention").[5]

The district court relied on these principles as an additional basis for allowing Clyde Snow to participate as a party, ruling "any objection based on the requirement to present a formal motion to intervene has been waived based on the substantial process and other events that have occurred since July of 2013." R. 6528. This ruling has ample

[5] Other jurisdictions have adopted similar principles. *See, e.g.*, *Schulz, Davis & Warren v. Marinkovich*, 661 P.2d 5, 8 (Mont. 1983) (holding a party's failure to object to nonparties' presence "until the moment of trial amounts to a waiver of any objections to his intervention"); *Roach v. Churchman*, 457 F.2d 1101, 1104 (8th Cir. 1972) (deeming the actions of the district court, in affording relief to a nonparty, to be "equivalent to authorizing [nonparty] to intervene in the action[,]" and directing the district court, upon remand, to "enter an order of intervention nunc pro tunc"); *Pub. Serv. Co. of Colorado v. Blue River Irr. Co.*, 753 P.2d 737, 740 (Colo. 1988) (viewing a nonparty's "filing of an entry of appearance as analogous to the filing of a defective motion to intervene," and noting that "[w]hen a technically defective motion to intervene is filed, the existing parties may waive their right to object to the intervention by failing to make timely objections").

record support.

Counsel for all parties, as well as Boyle, were present at the July 15, 2013 hearing when Clyde Snow requested that the Court retain jurisdiction for the limited purpose of resolving its attorney lien and fee claims. *See* R. 6528. No sustainable or proper objection to this request was raised by the attorneys representing, or purporting to represent Ms. Woodson at the hearing, including PYG, Boyle or Mr. Atkin. *Id.* In fact, Mr. Atkin requested the district court retain jurisdiction to consider a request to nullify Clyde Snow's lien on its merits.[6] R. 6528, pp. 5-6. Indeed, the lack of objection from Ms. Woodson to resolving Clyde Snow's attorney's lien in the existing action is not surprising. Ms. Woodson made no claim to any portion of the funds at issue, which represented solely attorney's fees for work actually performed by lawyers on her case. By having the lien resolved in the existing case after she was dismissed, Ms. Woodson benefitted by avoiding having to be named as a party defendant in a separate proceeding by Clyde Snow to enforce its attorney's lien.[7]

Similarly, defendants' counsel did nothing more than "voice our concern" about the court keeping the case open for the limited purpose of resolving the attorney lien. R. 6528, pp. 7-8. This was not an actual "objection." *Jensen*, 2005 UT 81 at ¶ 138 ("An

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[6] *State v. Rangel*, 866 P.2d 607, 611 (Utah Ct. App. 1993) ("[T]o properly preserve an issue for appeal, a party must enter an objection on the record that is both timely and specific.").

[7] Woodson, PYG and Boyle not only had notice of Clyde Snow's assertion of a lien as early as June of 2010, they also recognized Clyde Snow's right to recover payment thereunder as far back as October 2011, by reimbursing Clyde Snow for costs incurred from money received from a partial settlement of claims against the State. R. 6525, pp. 67-68, 105.

objection is defined as a formal statement opposing something that has occurred, or is about to occur, in court.") (citation and quotations omitted). That defendants' counsel did not object to Clyde Snow's participation is further buttressed by his subsequent statements to the court during the hearing. For example, when the court asked defendants' counsel whether their concerns would be resolved if the court entered "an order dismissing all claims against your client with prejudice . . . and simply leaving open the issue of the attorney's lien," defendants' counsel responded: "I think so, Your Honor. I just think it would be cleaner the other way." *Id.* Moreover, the Court gave all parties another chance to object at the end of the hearing, after detailing how it intended to rule, but before entering its ruling keeping the case open to resolve Clyde Snow's attorney lien. *Id.*, pp. 16-17. Despite this additional opportunity, no party objected to the district court's rulings. *Id.*

Thereafter, none of the original parties, nor Boyle, objected to PYG's deposit of the fees into court or to the establishment of the interpleader. R. 5090-92; 5104-83. In fact, the first and only actual objection to Clyde Snow's participation came from Boyle through his Motion to Dismiss approximately ten months later, after court-ordered mediation, discovery and other substantial process had occurred. R. 5467-74. However, even Boyle agreed when later asked by the district court if he had waived any objection to Clyde Snow's participation. R. 6524, pp. 9-10.

The Court of Appeals disregarded this record evidence supporting the district court's waiver ruling. *See Boyle,* 2016 UT App 114 at ¶¶ 17-22. In doing so, the Court of Appeals failed to give the proper deference to the district court's fact finding function,

which alone undermines the validity of its waiver ruling. *See Mower,* 2016 UT App 174 at ¶ 11. Rather than afford the district court the necessary deference, the Court of Appeals attempted to draw a strained analogy between the circumstances of the present case and those in Ostler. 1999 UT 99; see Mower, 2*01*6 UT App 174 at ¶ 11. However, *Ostler* is plainly distinguishable.

In Ostler, this Court observed there *w*as no waiver where the attorney at issue, Kunkel, made no filing on his own behalf in the case "until after Ostler's [his former client's] case had been settled and the trial court had dismissed Ostler's action with prejudice." Ostler, 1999 UT 99 at ¶ 9. Here, *u*nlike Ostler, Clyde Snow's June 28, 2013 Objection and its request at the July 2013 hearing that the district court retain jurisdiction to resolve its attorney's lien were made *before* dismissal of the underlying action, taking this case outside of *Ostler.* R. 4669-73. In addition, here, no party lodged an objection to the district court's indication that it intended to dismiss the defendants, but hold the matter open for resolution of Clyde Snow's attorney lien. R. 4683-86; 6528, pp. 8, 16-17. Moreover, to further distinguish *Ostler*, none of the settling parties contested Clyde Snow's claim to recover attorney fees. R. 6528. *Ostler* is thus procedurally and factually distinct from the present case, and the Court of Appeals erred by substituting its judgment on waiver and intervention for the district court's. *See Sucec,* 924 P.2d at 887; *Mower,* 2016 UT App 174, at ¶ 11.[8]

[8] Arguably, even if an error were assumed, the doctrine of invited error appears applicable, given Boyle's participation, representations, and filings before the district court. *See Tschaggeny v. Milbank Ins. Co.*, 2007 UT 37, ¶ 12, 163 P.3d 615 ("The invited error doctrine prevents a party from taking advantage of an error committed at

Furthermore, the Court of Appeals' rationale that Ms. Woodson and the defendants were somehow excused from their obligations to object because it would have been "futile," or put them at risk of having Clyde Snow treated as a party or "having the court rule in a manner contrary to their interests," *Boyle*, 2016 UT App 114 at ¶ 22, also departs from established Utah law. The very purpose of requiring a party to object to a ruling he or she believes is erroneous is to preserve the objection for review. *See, e.g.*, *Dejavue, Inc. v. U.S. Energy Corp.*, 1999 UT App 355, ¶ 11, 993 P.2d 222. Unlike in *Ostler*, counsel for Ms. Woodson and the defendants were present at the hearing on Clyde Snow's Objection and had an opportunity to object if they so desired. They did not object because there was no reason to object. They were not prejudiced and have not claimed to be prejudiced by the district court's decision to retain jurisdiction to resolve Clyde Snow's attorney's lien. And, under Utah law, by not objecting to Clyde Snow's participation, they waived the right to object. *Dejavue*, 1999 UT App 355 at ¶ 11. Notably, neither Ms. Woodson nor any defendant has objected to this day, and, as indicated, Boyle repeatedly conceded by both words and conduct that he waived any objection. R. 5104-83; 6524, pp. 9-10; 6528, pp. 5-6.

Finally, it bears emphasis that the only parties interested in the funds at issue – Clyde Snow and Boyle – have already had their claims adjudicated, following a full trial on the merits. The Court of Appeals' decision to vacate the district court's judgment serves little purpose other than to require a do-over. Such a result, particularly under the

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trial when that party led the trial court into committing the error.") (internal citations and quotations omitted).

circumstances of this case, is wasteful, unwarranted, and should be avoided. *See Martindell v. Int'l Tel. & Tel. Corp*., 594 F.2d 291, 295 (2d Cir. 1979) (holding, in further support of its ruling that any need for formal intervention was waived, that "since the district court has already adjudicated the issues raised by the Government we are not disposed to remand the case to the district court for the rather wasteful procedure of requiring the Government formally to seek post hoc intervention that would undoubtedly be granted, with the result that the case would then be returned to us for review"). After all, "[i]t is the purpose of the law, and of the court in administering it, to do justice and to look through form to substance when necessary to accomplish that objective." *Hart Bros. Music Co. v. Wood*, 384 P.2d 591, 593-94 (Utah 1963); *see also* Utah R. Civ. P. 1.

Accordingly, the Court of Appeals erred in ruling that Clyde Snow failed to timely intervene and that no party waived the requirements for formal intervention. The Court of Appeals' decision should be reversed and the district court's judgment reinstated.

II. THE COURT OF APPEALS ERRED BY RULING THE DISTRICT COURT DID NOT ACQUIRE SUBJECT MATTER JURISDICTION TO RESOLVE CLAIMS TO MONEY DEPOSITED IN COURT.

The second issue upon which this Court granted the Petition is:

> Whether the Court of Appeals erred in concluding [Clyde Snow's] arguments regarding its status as an interpleader party were inadequately briefed and did not demonstrate such a status.

(Order Granting Petition, p. 1.) For the reasons stated below, Clyde Snow sufficiently briefed to the Court of Appeals how the establishment of the interpleader affected its status as a party and how the Court of Appeals' treatment of this issue was both

incomplete and erroneous. Clyde Snow will address substantively the effect of the interpleader before addressing the sufficiency of the briefing.

A. The Court Of Appeals Erred by Ruling the District Court Lacked Jurisdiction Over the Claims of Boyle and Clyde Snow, Asserted Through Pleadings, to Fees Deposited With the Court.

Clyde Snow's status as a party, and the district court's authority to enter orders affecting its interests, is further supported by the establishment of the equitable interpleader proceeding. "An action in interpleader is a proceeding in equity in which a person who has possession of money or property which may be owned or claimed by others seeks to rid himself of risk of liability, or possible multiple liability, by disclaiming his interest and submitting the matter of ownership for adjudication by the court." *Terry's Sales, Inc. v. Vander Veur,* 618 P.2d 29, 31 (Utah 1980).

1. The establishment of the interpleader.

On January 30, 2014, shortly after mediation failed, PYG filed a motion to interplead the attorneys' fees over which Clyde Snow claimed a lien. R. 5073-86. PYG represented it had no interest in the disputed fees, and that the only parties with claims to the fees were "Mr. Boyle and Mr. Wiese, and Clyde Snow." *Id.* PYG argued it should be allowed to interplead and deposit the funds into court to "avoid any risk of liability, including multiple liability" to the claimants, and be released from further liability. *Id.*

None of the claimants opposed PYG's motion, and in March 2014, the district court exercised its authority to enter an order granting PYG's motion and established the interpleader by directing PYG to deposit the funds into court pursuant to "Rule 67 of the Utah Rules of Civil Procedure." R. at 5275-80. Thereafter, PYG deposited the funds

into the court, vesting the district court with jurisdiction over the funds, and Clyde Snow and Boyle then filed pleadings, as parties, asserting their claims to the interpleaded *res*, which they willingly and actively litigated. R. 5289-5466; 5104-83; 6525; 6322-33. As the district court ruled, the deposit of this money into court, and the interpleader proceedings that followed, eliminated any further need for Clyde Snow to file a formal motion to intervene. R. 6285.

2. The Court Appeals' rulings regarding the establishment and effect of the interpleader were erroneous.

The Court of Appeals relegated the entirety of its discussion of interpleader to a footnote. *Boyle,* 2016 UT App 114 at ¶ 23 n.4. Even where discussed, the Court of Appeals gave the argument short shrift, opining that PYG's motion did not create an interpleader action to the funds because "[p]roper interpleader actions" under Utah Rules of Civil Procedure 22 "are asserted in a complaint or by way of cross-claim or counterclaim." *Id.* (citation omitted). The Court of Appeals' treatment of this issue is erroneous in several respects.

First, the Court of Appeals' analysis ignores the reality of the situation and "exalts form over substance." *See generally Youngblood v. Auto–Owners Ins. Co.*, 2007 UT 28, ¶ 22, 158 P.3d 1088 (observing that "[o]ur rules of pleading require that a cause be made out, but not necessarily that it always be correctly labeled," for "[s]uch an exalting of form over substance ... is to be avoided when possible"). It is similarly well established that "[a] court of equity looks through form to substance." *Colman v. Colman,* 743 P.2d 782, 786 (Utah Ct. App. 1987) (quotations and citation omitted) (alteration in original).

The Court of Appeals disregarded these concepts in holding that PYG's motion to interplead the funds did not "establish an interpleader action" because Rule 22 "requires filing a pleading." *Boyle,* 2016 UT App 114 at ¶23 n.4. Notably, the text of Rule 22 does not state that a complaint or other pleading must be filed to interplead or deposit funds into court or to litigate claims to such funds and the Court of Appeals cited no authority supporting such an interpretation. *See id*. Reading such a requirement into Rule 22 is not only inconsistent with the plain language of Rule 22, it contradicts the spirit of "liberal" construction required by Rule 1. *See* Utah R. Civ. P. 1; 22.

The message from the Court of Appeals instead is that if PYG had filed a so-called complaint-in-intervention seeking leave to interplead the funds, rather than seeking the same relief by motion, then any procedural concerns would have evaporated, notwithstanding that no party objected to the procedure chosen by Ms. Woodson's counsel. But, the funds would have been deposited with the court either way, with the exact same parties making the exact same claims to the exact same funds. By reading Rule 22 to require a pleading instead of a motion that accomplishes the same result, the Court of Appeals has grafted an inefficient and unwelcome new requirement onto the rule, which should be avoided,[9] particularly in an equitable interpleader action. *See Hudson Sav. Bank v. Austin*, 479 F.3d 102, 108 (1st Cir. 2007) ("At bottom, interpleader is an equitable mechanism, and courts should not hesitate to 'eliminat[e] those technical

[9] *See* Utah R. Civ. P. 1, 22; *Aequitas Enterprises, LLC v. Interstate Inv. Group, LLC*, 2011 UT 82, ¶ 17, 267 P.3d 923 (procedural rules are interpreted according to plain language, in harmony with other rules); *see also Union Pac. R.R. Co. v. Pub. Serv. Comm'n of Utah*, 300 P.2d 600, 602 (Utah 1956) (observing "the law is more concerned with substance than with labels or titles").

restraints on the device that are not founded on adequate policy considerations.'") (quoting 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1704, at 541 (3d ed.2001)).

Second, the Court of Appeals also overlooked that Rule 67 of the Utah Rules of Civil Procedure authorizes the district court to order the deposit money into court upon the filing of a "motion" indicating that the money "belongs or is due to another party." Utah R. Civ. P. 67. This is what the district court accomplished, as shown by its reference to Rule 67 in its Order granting the Motion to Interplead Funds. R. 5276. This is a proper use of a trial court's authority under Rule 67. As the Tenth Circuit Court of Appeals observed under circumstances similar to the present case:

> Rule 67 leaves to the discretion of the district court the decision as to whether to permit the deposit of funds in court. We will not overturn the magistrate's decision absent an abuse of discretion. . . The [lower court] magistrate acted well within his discretionary authority in allowing the funds to be paid into court and excusing the defendants. His decision both ensured that the settlement fund would be available for disbursement and facilitated judicial economy by permitting the defendants, who no longer had an interest in the funds or in these proceedings, to withdraw.

Garrick v. Weaver, 888 F.2d 687, 694 (10th Cir. 1989).[10]

It is not material that the funds, as fees collected by PYG, were deposited by PYG rather than Ms. Woodson or the defendants. The deposited funds came from the

[10] *See also Alstom Caribe, Inc. v. George P. Reintjes Co., Inc.*, 484 F.3d 106, 114 (1st Cir. 2007) ("As a general proposition, it is within a district court's sound discretion to accept a deposit of settlement funds in order to allow a settling defendant to withdraw from litigation while competing claimants continue to squabble over their entitlement to the settlement proceeds. As a corollary of this proposition, a defendant may be allowed to tender a Rule 67 deposit even if one or more of the competing claimants is not a party to the action.") (citations omitted).

settlement of the claims in the underlying case, and were deposited by Ms. Woodson's counsel in the underlying case (PYG). R. 5284-88. Upon the district court's order, and the deposit of the funds into court, Clyde Snow and Boyle each filed pleadings asserting their claims to the funds, and thereby became the "parties" to the contested interpleaded *res.* R. 5289-5466; 5104-83. *See* Utah R. Civ. P. 21 ("Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.") (emphasis added); *see also Down Syndrome,* 2012 UT 86 at ¶ 18 (noting "the affirmative act of filing suit . . . subjects one to the jurisdiction of the court").

The district court's actions caused no prejudice and were consistent with the assertion of equitable authority and with the "speedy" and "just" administrative of justice. Utah R. Civ. P. 1. As the United States Supreme Court has observed regarding the "comprehensiveness of equitable jurisdiction":

> Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction . . . It may act so as to adjust and reconcile competing claims and so as to accord full justice to all the real parties in interest; if necessary, persons not originally connected with the litigation may be brought before the court so that their rights in the subject matter may be determined and enforced. In addition, the court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the circumstances. Only in that way can equity do complete rather than truncated justice.
>
> Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. . .

Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946) (citations omitted) (emphasis added). The Court of Appeals departed from these fundamental principles.

Third, the Court of Appeals disregarded the effect the deposit of the funds into the court had upon the court's subject matter jurisdiction to resolve claims to those funds. "Subject matter jurisdiction ... is the authority of the court to decide the case." *Johnson v. Johnson*, 2010 UT 28 at ¶ 8 (ellipses in original) (citation and quotations omitted). "[T]he concept of subject matter jurisdiction relates to 'the relationship between the claim and the forum that allows for the exercise of jurisdiction.'" *Id.* at ¶ 9 (citation omitted).

Although Clyde Snow is unable to locate any Utah authority addressing this exact issue, it is well-accepted that a court has subject matter jurisdiction over money or property in its possession. *See, e.g., Adams v. Allied Chem. Corp.*, 503 F. Supp. 253, 255 (E.D. Va. 1980) ("Jurisdiction over a fee claim may also be found where the claim relates to assets in the actual or constructive possession of the court.").[11] The United States District Court for the Southern District of New York's holding is instructive:

> In any event, belated categorization of the procedural steps under Rule 67 or any other rubric is not essential to the ultimate denial of claimant's motion [for disbursement of funds back to the depositing party, who had disclaimed any interest]. For however the procedural

[11] *See also, e.g., Continental Casualty Co. v. Kelly*, 106 F.2d 841, 844 (D.C. Cir. 1939) (observing, the attachment of the funds "brought those funds within control of the Court" and "the court having possession of the res or its equivalent ought to be clothed with jurisdiction upon proper application to establish the lien and disburse the fund"); *United States v. Rubenstein*, 971 F.2d 288, 294 (9th Cir. 1992) ("Funds deposited in the registry of a federal district court are in *custodia legis*. As such, the district court's control over the funds is virtually supreme."); *Grimes v. Chrysler Motors Corp.*, 565 F.2d 841, 844 (2d Cir.1977) (court had ancillary jurisdiction to decide a fee dispute between trial counsel and attorney of record after the court approved the settlement because the settlement funds were in the court's registry and therefore within its control).

> moves may be rationalized, there is a primitive and fundamental principle of jurisdiction that is overlooked by the claimant. This is, of course, the hard and decisive fact of possession by the court— a most elementary basis upon which the court is empowered, and required, to exercise the "right to say" (jurisdiction) where the res belongs. That basic obligation, inherent in the court's very functioning as a court, is inconsistent with the claimant's notion that the court should simply cast the money away without deciding who has a right to take it. "A court, which has custody of the res, must at some time surrender it, and it can know to whom it should deliver only in case it either decides the right to possession itself, or awaits the action of such other competent tribunal as the claimant may choose." There is no suggestion of any other competent or available tribunal. The money and the controversy attending it are both inescapably here. The duty of decision is likewise in this court.

Reliable Marine Boiler Repair Inc. v. Sum of $35,000.00, 270 F.Supp. 1017, 1020-21 (S.D.N.Y. 1967) (internal citations omitted) (emphasis added).

Once PYG deposited the interpleaded *res*, the district court's subject matter jurisdiction over the *res* and any claims thereto was perfected and continued until the *res* was disbursed.[12] This is particularly true where the funds were deposited based on Clyde Snow's assertion of its attorney's lien to a portion of the settlement proceeds arising out of the underlying case. Once the funds were deposited, the district court had to decide to whom to disburse them, especially where neither PYG nor Ms. Woodson wanted them back. *See Reliable Marine,* 270 F.Supp. at 1020-21; *see also Garrett,* 201 F.2d at 253. Thus, the failure, if any, by Clyde Snow to file a document entitled "motion to intervene"

[12] *Garrett v. McRee*, 201 F.2d 250, 253 (10th Cir. 1953) (stating, "the jurisdiction of the court is not exhausted so long as the funds are in the registry of the court and adverse claims are asserted thereto; and where an attorney recovers a fund in a suit under a contract with a client providing that he shall be compensated only out of the fund he creates, the court having jurisdiction of the subject matter of the suit has power to fix the attorney's compensation and direct its payment out of the fund").

was resolved when the district court's accepted the deposit of the interpleaded *res* of funds and acquired subject-matter jurisdiction over the *res.*

Fourth, even assuming *arguendo* error could be found in any of the district court's actions, the complete lack of prejudice renders any error harmless. *See, e.g., Hall v. NACM Intermountain, Inc.*, 1999 UT 97, ¶ 21, 988 P.2d 942 ("We do not reverse the trial court for committing harmless error."). Both Boyle and Clyde Snow received the full process of law, including a trial on the merits of their claims to the interpleaded funds.[13]

B. Clyde Snow Adequately Raised This Issue to the Court of Appeals.

In the Order granting the Petition, this Court questioned whether the Court of Appeals may have declined to consider the effect of interpleader on the basis that it was inadequately briefed.[14] (Order Granting Petition, p. 1). Although the Court of Appeals discussed this issue only in a footnote, Clyde Snow addressed the effect of the interpleader upon its party status at length in both its Brief of Appellee and Supplemental Brief of Appellee, including to argue that "any requirement to intervene was waived, or

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[13] *Cf. In re Thompson's Estate*, 269 P. 103, 109 (Utah 1927) (holding the district court had personal and subject matter jurisdiction although the parties were incorrectly designated because the court looks to "substance and not to mere form," and "the powers exercised by the court in the cause, the procedure adopted, and all of the rights and remedies accorded the parties, were the same as, and no less or different than, had the parties been designated the treasurer as plaintiff and the heirs as defendants in the cause").

[14] The Court of Appeals did not state it was declining to consider Clyde Snow's argument regarding the effect of the interpleader because it was inadequately briefed. *See Boyle*, 2016 UT App 114 at ¶ 23 n.4. To the extent the Court of Appeals did rely on such an unexpressed basis, this itself is error. *See Reese v. Reese,* 1999 UT 75, ¶ 8, 984 P.2d 987 (holding the Court of Appeals' opinion was "inadequate" where it did not identify "the basis for refusing to treat an issue," or designate "which issues lacked merit" or "were not supported by proper legal argument").

rendered moot by the establishment of an interpleader." (Brief of Appellee, p. 22; *see also id.* pp. 1-2, 12-16, 22-26; Supplemental Brief of Appellee, 3-7 (arguing specifically that the establishment of the interpleader within the action distinguished this case from *Down Syndrome* by making both Clyde Snow and Boyle parties)). This was adequate. *See Smith v. Smith*, 1999 UT App 370, ¶ 8, 995 P.2d 14 ("An issue is inadequately briefed when 'the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court.'").

Moreover, although Clyde Snow may not have framed its arguments in exactly the same manner, or emphasized all of the same authorities in its briefing before the Court of Appeals, this is explained by the posture of the appeal. Clyde Snow was the appellee, responding to issues framed by Boyle. While Boyle claimed Clyde Snow did not properly intervene, he did not claim that the district court lacked subject matter jurisdiction to establish the interpleader itself or that the district court failed to follow Rule 22 of the Utah Rules of Civil Procedure in doing so. (*See* Brief of Appellant, pp. 17-24.) Additionally, despite ordering Supplemental Briefing, the Court of Appeals did not give any indication that it was looking into the district court's jurisdiction, or questioning the establishment of the interpleader. Rather, the Court of Appeals asked for further discussion only on whether "the Court of Appeals had jurisdiction over this appeal," if "Appellant [Boyle] was not a party to the underlying action." (Order, Add. F hereto) (emphasis added). Had the Court of Appeals indicated it was looking into the district court's subject matter jurisdiction, Clyde Snow could have provided additional discussion of the authorities cited herein. In these circumstances, to the extent the Court

of Appeals based its decision regarding interpleader upon the inadequate briefing doctrine, it erred.

III. THIS COURT HAS ORIGINAL JURISDICTION TO ISSUE A WRIT OF CERTIORARI TO CORRECT THE COURT OF APPEALS' ERRONEOUS RULING DECLARING THE DISTRICT COURT'S JUDGMENT VOID.

The third issue upon which this Court granted the Petition is:

> If [Clyde Snow] did not acquire party status, whether this Court can acquire jurisdiction via a petition for a writ of certiorari to reverse or vacate a Court of Appeals['] decision that purported to declare a district court[']s judgment void notwithstanding its concession of a lack of appellate jurisdiction.

(Order Granting Petition, p. 1). So framed, the Court need not reach this issue if it agrees with Clyde Snow's position on either of the first two issues for which the Petition was granted.[15] In the event this Court does reach this issue, Clyde Snow responds in two parts. First, this Court has original jurisdiction to issue a writ of certiorari even if Clyde Snow did not obtain party status. Second, the Court of Appeals erred in declaring the district court's judgment void after it determined it did not have appellate jurisdiction.

A. The Supreme Court has Original Jurisdiction to Issue a Writ of Certiorari to the Court of Appeals.

This Court has held that "persons or entities that are not parties to a proceeding are not entitled to an appeal as of right." *Down Syndrome,* 2012 UT 86 at ¶ 9 (citing

[15] Given the manner in which the Court framed this issue, Clyde Snow believes it is applicable only if the Court determines Clyde Snow did not become a party through intervention, waiver, or the establishment of the interpleader proceeding. This Court must have jurisdiction to review the Court of Appeals' ruling that the district court erred in allowing Clyde Snow to participate as a party, as this is the very decision that called into question Clyde Snow's status as a party. *See Nichols*, 2016 UT 19 at ¶ 13 (Supreme Court reviews decision on Court of Appeals on writ of certiorari, not the district court).

Brigham Young Univ. v. Tremco Consultants, Inc., 2005 UT 19, ¶ 46, 110 P.3d 678, and *State v. Sun Sur. Ins. Co.*, 2004 UT 74, ¶ 9, 99 P.3d 818). Instead, "an extraordinary writ is the vehicle pursuant to which [nonparties can] properly . . . challenge [] [a court] order." *Down Syndrome*, 2012 UT 86 at ¶ 9 (alterations in original) (quotations and citations omitted).

However, *Down Syndrome* and the authorities cited therein considered only the question of appellate jurisdiction in a direct appeal by a non-party. *See Down Syndrome*, 2012 UT 86 at ¶¶ 13, 23 ("It is because we lack *appellate jurisdiction*, and thus the power to hear this particular appeal, that we must dismiss Mr. Gilbert's case.") (emphasis in original)*; accord Tremco*, 2005 UT 19 at ¶¶46-47 (overruled on other grounds); *Sun Sur. Ins. Co.*, 2004 UT 74 at ¶ 9. These authorities did not consider the scope of this Court's original jurisdiction, including jurisdiction to issue a writ of certiorari, which is broad enough to confer power on this Court to reverse an erroneous decision of the Court of Appeals, even if Clyde Snow did not acquire formal party status.

The power to issue a writ of certiorari stems from the Utah Constitution. Article VIII, section 3 of the Utah Constitution provides that the Supreme Court has "original jurisdiction to issue all extraordinary writs." Utah Const. art. VIII § 3. "The constitution does not define the term 'extraordinary writs,' but the meaning of the term can be ascertained in large measure from the history of Article VIII." *Petersen v. Utah Bd. of Pardons*, 907 P.2d 1148, 1152 (Utah 1995).

"The term 'extraordinary writs' first appeared in the Utah Constitution in the 1984 rewriting of Article VIII." *Id.* However,

> [a]s initially adopted in 1896, Article VIII, section 4 of the constitution referred to specific writs: "The Supreme Court shall have original jurisdiction to issue writs of *mandamus, certiorari,* prohibition, *quo warranto* and *habeas corpus.* In other cases, the Supreme Court shall have appellate jurisdiction only, and power to issue writs necessary and proper for the exercise of that jurisdiction."

Id. (quoting Utah Const. art. VIII, sec. 4 (1896)). "The term 'extraordinary writs' that appears in the 1984 rewrite of Article VIII, section 3 was intended to include the specific writs mentioned in the original version of Article VIII, including 'all writs necessary and proper for the exercise' of the Supreme Court's appellate function," and "the prerogative writ[] of . . . certiorari." *Id.* (emphasis added). Relying on this construction, the *Petersen* Court held that it had original jurisdiction to address the issues raised in the petitioner's petition for writ of habeas corpus, even though petitioner "had no right to appeal" from the lower court's decision and was "not properly before this Court on appeal." *Id.*

This Court's discussion of the writ of certiorari in *Boggess v. Morris* is also instructive. 635 P.2d 39 (Utah 1981). The Court stated that the constitutional language that "empowers this Court to issue the writ of certiorari . . . refers to the writ defined by the common law . . . ." *Id.* at 42. "The scope of review by the common-law writ of certiorari was very broad, encompassing not just questions of jurisdiction but also a review of the evidence and the regularity of the proceedings . . . ." *Id.* (citations omitted). "Common-law certiorari is a discretionary writ" that "is available in aid of an appellate court's supervision of the actions of inferior courts, especially in implementing the process of appellate review." *Id.; accord Higgins v. Burton*, 232 P. 917 (Utah 1924)

(granting writ of certiorari at the request of the district attorney to review a lower court's order that was not subject to appellate review by any other means).

Pursuant to these authorities, this Court has original jurisdiction to issue a writ of certiorari to review and, if necessary, to reverse or vacate the Court of Appeals' decision, even in circumstances in which no direct right to appeal exists, such as in the case of an aggrieved nonparty.[16] That this Court has the power to issue a writ of certiorari, even if sought by a nonparty, is further buttressed by this Court's statement in *Down Syndrome* that "a nonparty who seeks relief from a lower court's order that purports to affect the nonparty's interests must proceed by way of extraordinary writ." *Down Syndrome,* 2012 UT 86 at ¶ 10. As indicated, the term "extraordinary writ" specifically incorporates the "writ of certiorari." *Petersen*, 907 P.2d at 1152. Where an extraordinary writ is available to a nonparty, then *a fortiori* the writ of certiorari is as well. *See id.* Accordingly, this Court has jurisdiction to issue a writ of certiorari to reverse or vacate the Court of Appeals' decision.[17]

B. The Court of Appeals Erred by Declaring the District Court's Judgment Void After Determining Boyle Had No Right of Direct Appeal.

Even assuming *arguendo* this Court determines that neither Clyde Snow nor Boyle

[16] *See Petersen*, 907 P.2d at 1152; *see also Boggess*, 635 P.2d at 43 (holding, "we exercise our discretion to issue the common-law writ of certiorari to bring up the record and allow defendant a direct review in this Court of the alleged errors in his trial for manslaughter, on the merits, just as if he had taken an appeal within the statutory period").

[17] Boyle cannot take advantage of this Court's original jurisdiction to issue a writ of certiorari because he did not file the requisite petition to invoke this jurisdiction. *See* Utah R. App. P. 45.

obtained party status, it should reverse the Court of Appeals' decision because it misinterpreted this Court's opinion in *Down Syndrome*. *See* 2012 UT 86.

The Court of Appeals made two primary rulings. First, it ruled the district court lacked jurisdiction to enter orders with respect to the attorney fees at issue, and declared the district court's rulings and judgment with respect to Clyde Snow's attorney's lien void. *Boyle*, 2016 UT App 114 at ¶¶ 1, 12, 23, 25. Second, the Court of Appeals ruled that because Clyde Snow and Boyle were not formally parties, it lacked appellate jurisdiction "to review Boyle's and Clyde Snow's arguments regarding the merits of the district court's determinations," citing *Down Syndrome*. *Id.* at ¶ 24.

The Court of Appeals misconstrued *Down Syndrome*. Under *Down Syndrome*, the Court of Appeals' second ruling that it lacked appellate jurisdiction precluded it from reaching its first ruling that the district court lacked jurisdiction.[18]

In *Down Syndrome*, the district court entered a "Disgorgement Order" against Donald Gilbert to disgorge funds improperly paid to Mr. Gilbert. *See Down Syndrome*, 2012 UT 86 at ¶¶ 2-5. Unlike here, Mr. Gilbert was admittedly never a party to the suit. *Id.* at ¶ 5. Two years *after* the Disgorgement Order was entered, Mr. Gilbert filed a motion to vacate it on the basis that it "was void for lack of personal jurisdiction because he was never named a party or personally served with motions or the order." *Id.* at ¶ 6. The district court denied Gilbert's motion on the merits and Gilbert appealed. *Id.*

This Court "dismiss[ed] Mr. Gilbert's direct appeal for lack of appellate

[18] For the reasons stated, the Court of Appeals' appellate jurisdiction to consider Boyle's direct appeal is distinct from this Court's original jurisdiction to issue a writ of certiorari to review the Court of Appeals' Opinion.

jurisdiction because, as a nonparty, Mr. Gilbert was not entitled to an appeal as of right." *Id.* at ¶ 8. As a "nonparty," Mr. Gilbert was required to "proceed by way of an extraordinary writ." *Id.* at ¶ 10. Notably, in dismissing Mr. Gilbert's appeal, this Court left in place the district court's Disgorgement Order – a coercive injunctive order against Mr. Gilbert – notwithstanding its determination that Mr. Gilbert was a not a party to the underlying suit and Mr. Gilbert's argument that the district court lacked personal jurisdiction over him. *See id.* at ¶¶ 11, 32. This Court did not reach the question of whether the district court had jurisdiction over Mr. Gilbert to issue the Disgorgement Order because "'[w]hen [an appellate] court lacks jurisdiction over an appeal, it retains only the authority to dismiss the appeal.'" *Id.* at ¶ 7.

To the extent Boyle was never made a "party," the same result was required here. Under *Down Syndrome*, the Court of Appeals was left with a single option upon determining that Boyle was not a party: to dismiss his appeal of the district court's rulings. *See id.* Indeed, the circumstances here are even more compelling because Boyle never claimed the district court lacked jurisdiction. He, in fact, claimed the opposite. (Boyle's Supp. Brief to Court of Appeals, pp. 5-6).

The Court of Appeals disregarded the strictures imposed by *Down Syndrome* by evaluating the district court's exercise of jurisdiction over Boyle and Clyde Snow after the Court of Appeals concluded they were not parties to the proceedings below, and holding the district court's judgment was void. *Boyle*, 2016 UT App 114 at ¶¶ 1, 12, 23, 25. Such a ruling granted Boyle the relief he sought on appeal: reversal of the district court's decision. This is plainly erroneous under *Down Syndrome.* This Court should

therefore reverse and vacate the Court of Appeals' Opinion on this alternative basis.[19]

CONCLUSION

For each and all of the foregoing reasons, this Court should issue the writ of certiorari to the Court of Appeals, and reverse or vacate the Court of Appeals' Opinion.

DATED this 23rd day of November 2016.

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/s/ Jeffery S. Williams
Jeffery S. Williams
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[19] Clyde Snow is aware of *Gilbert v. Third District Court Judges,* 2016 UT 31, issued July 20, 2016, which continues Mr. Gilbert's saga from *Down Syndrome.* The *Gilbert* decision does not impact Clyde Snow's analysis of *Down Syndrome.* Clyde Snow further notes that, in denying Mr. Gilbert's petition for extraordinary relief, this Court left in place the orders entered against Mr. Gilbert by the trial court, without considering Mr. Gilbert's claim that the district court lacked jurisdiction over him as a nonparty. *Gilbert,* 2016 UT 31 at ¶¶ 20-21.

CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 13,914 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 13-point font.

Dated this 23rd day of November 2016.

NELSON CHRISTENSEN
HOLLINGWORTH & WILLIAMS

/s/ Jeffery S. Williams
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Attorney for Clyde Snow & Sessions, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of November, 2016, I filed the foregoing **BRIEF OF APPELLANT/PETITIONER CLYDE SNOW & SESSIONS, P.C.** with the Clerk of the Court by email at supremecourt@utcourts.gov and served two (2) true and correct copies of such filing via U.S. first-class mail, postage prepaid, upon:

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